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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

EAST WEST BANK, a California  
corporation,

Plaintiff,

vs.

SUKEERT SHANKER, an individual;  
AELDRA FINANCIAL INC., a Delaware  
corporation; VENKAT  
GOPALAKRISHNAN, an individual; BLUE  
RIDGE BANK, N.A., a Virginia corporation;  
FS VECTOR LLC, a Delaware corporation;  
and DOES 1-7,

Defendants.

CASE NO. 3:20-cv-07364-WHO

**PLAINTIFF EAST WEST BANK'S  
OPPOSITION TO DEFENDANTS'  
MOTION FOR RECONSIDERATION OF  
THE COURT'S PRELIMINARY  
INJUNCTION ORDER**

Date: September 29, 2021

Time: 2:00 p.m.

Court: Courtroom 2, 17th Floor

Assigned to Hon. William H. Orrick

**REDACTED VERSION OF DOCUMENT FILED PUBLICLY**

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1 **I. INTRODUCTION**

2 Defendants' Motion for Reconsideration of the Court's Preliminary Injunction Order  
 3 ("Motion") is meritless. Not only does Defendants' Motion fail to show a "material difference in  
 4 fact or law" or "new material facts" warranting reconsideration under Local Rule 7-9, Defendants'  
 5 Motion improperly raises new arguments that flatly contradict the arguments Defendants made in  
 6 the underlying motion papers that cannot now serve as the basis for reconsideration. As detailed  
 7 below, the Court had jurisdiction to issue the Preliminary Injunction Order; injunctive relief was  
 8 warranted to restrain Defendants from using East West Bank's ("EWB") confidential, proprietary,  
 9 and trade secret information ("Confidential Information"); and recent discovery confirms  
 10 Defendants are violating the Preliminary Injunction Order. Defendants' Motion should be denied  
 11 for multiple reasons:

12 *First*, Defendants' argument for reconsideration based on EWB's Employee Handbook  
 13 directly contradicts the argument asserted by Defendants themselves in the underlying motion  
 14 papers. In Defendants' Opposition to EWB's Motion for Preliminary Injunction, Defendants  
 15 argued that EWB's Employee Handbook was *not* a binding agreement, and cited to *Mitri v. Arnel*  
 16 *Mgmt. Co.*, 157 Cal. App. 4th 1164, 1173 (2007) for the proposition that "acknowledgment of  
 17 employee handbook containing arbitration agreement did not constitute agreement to arbitrate  
 18 because 'conspicuously absent from the acknowledgment form is any reference to an agreement  
 19 by the employee to abide by the employee handbook.'" (Dkt. 61-3 at 16:25-17:5.) Defendants'  
 20 Motion now does an about-face and argues the direct opposite in a belated attempt to dissolve the  
 21 Preliminary Injunction Order. But as explained in EWB's Opposition to Defendants' Motions to  
 22 Compel Arbitration (Dkt. 154), the arbitration provisions in the Employee Handbook do not  
 23 constitute an enforceable arbitration agreement and therefore cannot serve as the basis for  
 24 reconsideration. By contrast, the "Binding Arbitration Agreement and Waiver of Jury Trial"  
 25 signed by Defendant Shanker on December 22, 2017—which is the only arbitration agreement  
 26 between EWB and Shanker (and studiously ignored in Defendants' Motion)—plainly authorizes  
 27 the current Preliminary Injunction Order.

28 The unenforceable arbitration provisions of the Employee Handbook also do not constitute

1 “newly discovered evidence,” because Defendants have long known of these provisions and  
 2 waived any objections to the injunction proceedings based upon them. It is undisputed that  
 3 EWB’s Employee Handbook was produced in its entirety to Defendant Shanker on May 7, 2021—  
 4 *over one month prior to* the filing of Defendants’ Opposition to EWB’s Motion for Preliminary  
 5 Injunction on June 9, 2021. But Defendant Shanker never objected to the injunction proceedings  
 6 based upon the arbitration provisions of the Employee Handbook; instead, Defendant Shanker  
 7 answered the complaint (without moving to compel arbitration) and proceeded to litigate EWB’s  
 8 Motion for Preliminary Injunction on the merits. Defendants therefore cannot demonstrate either  
 9 “newly discovered evidence” nor the “reasonable diligence” required under L.R. 7-9(b).

10 *Second*, Defendants’ argument for reconsideration related to EWB’s pending patent  
 11 application is based on the false premise that EWB’s patent application number 16/914,363 and  
 12 provisional patent application number 62/914,363 (the “Patent Applications”) disclose the trade  
 13 secrets claimed by EWB in this action. They do not. In this action, EWB has asserted 16 trade  
 14 secrets that fall into three broad categories relating to: (i) the Velo software and platform; (ii)  
 15 EWB’s proprietary anti-fraud and anti-money laundering systems and BSA/AML policies; and  
 16 (iii) EWB’s strategic planning documents. (Dkt. 50-4 at 5:13-16.) By contrast, EWB’s pending  
 17 patent application is entitled “Systems and Methods for Remotely Verifying Identity of Non-  
 18 Resident Aliens” and seeks patent protection for EWB’s novel onboarding process for Non-  
 19 Resident Aliens (“NRAs”) as embodied in EWB’s onboarding flows depicted in the Patent  
 20 Applications. Notably, *only 5 of the 16 trade secrets asserted in this action even relate to EWB’s*  
 21 *NRA onboarding process*, and as to those trade secrets, the trade secret information claimed by  
 22 EWB in this litigation is *not* disclosed in EWB’s Patent Applications.

23 *Third*, Defendants’ August 27, 2021 document production in response to the Court’s  
 24 August 6, 2021 Discovery Order (Dkt. 106) further proves that Defendants used EWB’s  
 25 Confidential Information to develop the Aeldra platform — and *continue to use* EWB’s  
 26 Confidential Information in violation of the Court’s Preliminary Injunction Order. Defendants’  
 27 recent document production includes numerous screen shots of the EWB documents stolen by  
 28 Defendant Shanker shortly prior to his termination, as well as Alpha Oak documents that were

1 created using EWB's Confidential Information and, subsequently, used by Defendants to develop  
 2 the Aeldra platform. Indeed, in an April 29, 2020 email, Defendant Gopalakrishnan (Aeldra's  
 3 COO) candidly wrote to a potential investor: "[REDACTED]"  
 4 [REDACTED]  
 5 [REDACTED]"<sup>1</sup> (emphasis added.) Defendants' document production also proves  
 6 categorically that many of the Aeldra development documents were created months prior to  
 7 Aeldra's engagement of any third-party vendors, thereby contradicting Defendants' primary  
 8 defense argument that the Aeldra platform was independently created by third-party vendors (i2c,  
 9 FS Vector, and Blue Ridge Bank).

10 In short, Defendants are seeking to dissolve the Preliminary Injunction Order because they  
 11 are still violating it and wish to avoid its mandates. That is not a valid basis for reconsideration.  
 12 EWB respectfully requests that the Court deny Defendants' Motion for Reconsideration of the  
 13 Court's Preliminary Injunction Order.

## 14 **II. ARGUMENT**

### 15 **A. Legal Standard**

16 Under Local Rule 7-9, a party seeking leave to file a motion for reconsideration must  
 17 specifically show "reasonable diligence in bringing the motion," and one of the following: (1) "a  
 18 material difference in fact or law exists from that which was presented to the Court before entry of  
 19 the interlocutory order for which reconsideration is sought" and "that in the exercise of reasonable  
 20 diligence the party ... did not know such fact or law at the time of the interlocutory order," or (2)  
 21 "[t]he emergence of new material facts or a change of law occurring after the time of such order,"  
 22 or (3) [a] manifest failure by the Court to consider material facts or dispositive legal arguments  
 23 which were presented to the Court before such interlocutory order." L.R. 7-9(b). Local Rule 7-9  
 24 further prohibits a party seeking reconsideration from "repeat[ing] any oral or written argument ...  
 25 in support of or in opposition to the interlocutory order which the party now seeks to have  
 26 reconsidered." L.R. 7-9(c).

27  
 28 <sup>1</sup> See Declaration of Grace W. Kang, dated September 22, 2021 ("Kang Decl."), Ex. 6.



Under Fed. R. Civ. P. 54(b), a district court may reconsider an order only if (1) it is presented with newly discovered evidence, (2) it committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. *See Sch. Dist. No 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *Sullivan v. SII Invs., Inc.*, No. 18-CV-00666-SI, 2018 WL 1367340, at \*2 (N.D. Cal. Mar. 16, 2018) (denying reconsideration, explaining that “a court should generally leave a previous decision undisturbed absent a showing that it either represented clear error or would work a manifest injustice”). Reconsideration is an “‘extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.’” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal citation omitted); *see also Monterey Bay Mil. Hous., LLC v. Pinnacle Monterey LLC*, No. 14-CV-03953-BLF, 2015 WL 1548833, at \*5 (N.D. Cal. Apr. 7, 2015) (denying reconsideration of a preliminary injunction order, explaining that “a motion for reconsideration should not be granted, absent highly unusual circumstances”).

## **B. The Arbitration Provisions in the Employee Handbook Are Not Grounds For Reconsideration**

### **1. The Handbook’s Arbitration Provisions Are Not Legally Enforceable**

Contrary to Defendants’ contention, EWB is not “contractually prohibited from ... seeking provisional relief” in this Court. (Dkt. 153 at 19:12-13.) The “Binding Arbitration Agreement and Waiver of Jury Trial” (hereinafter, “Arbitration Agreement”) that Shanker acknowledged on December 22, 2017—not the arbitration provisions in the Employee Handbook—is the only binding and enforceable arbitration agreement between EWB and Shanker. That Arbitration Agreement expressly provides that “[n]either party is prohibited from making an application for injunctive relief to a court of relevant jurisdiction.” (Dkt. 154-6 at 3, Declaration of Jill Teitelbaum, dated September 2, 2021 (“Teitelbaum Decl.”), Ex. A.)

The arbitration provisions in the Employee Handbook are not an enforceable arbitration agreement under the Federal Arbitration Act or California law because they were never acknowledged by Shanker. (*See* Dkt. 154-7, Teitelbaum Decl., Ex. B.) As explained in EWB’s Opposition to Defendants’ Motions to Compel Arbitration, the “Acknowledgment of Receipt of

Employee Handbook” signed by Shanker does not specifically reference the arbitration provisions. (Dkt. 154 at 6:9-24). As such, the Employee Handbook’s arbitration provisions are not legally enforceable and cannot serve as the basis for reconsideration. *See, e.g., Mitri*, 157 Cal.App.4th at 1173 (explaining that the acknowledgement “lacked any reference to an agreement by the employee to abide by the employee handbook’s arbitration agreement provision” and, as such, “[w]e cannot and will not create a term of a contract between the parties that the evidence does not show was ever agreed upon by the parties”) (emphasis added)); *see also Sparks v. Vista Del Mar Child & Fam. Servs.*, 207 Cal. App. 4th 1511, 1519 (2012) (invalidating arbitration provision in Employee Handbook “because defendant failed to point out or call attention to the arbitration requirement in the acknowledgment”); *Romo v. Y-3 Holdings, Inc.*, 87 Cal.App.4th 1153, 1159-60 (2001) (holding employee did not agree to binding arbitration because employee did not sign section regarding arbitration in employee handbook); *Ajamian v. CantorCO2e, L.P.*, 203 Cal.App.4th 771, 805 (2012) (“[W]hile Ajamian did have the Handbook containing the company’s policy of arbitrating disputes, she never signed or agreed to the actual arbitration agreement in the Handbook . . .”).

Indeed, Defendants themselves argued the same in opposing EWB’s Motion for Preliminary Injunction, noting that the provisions in the Employee Handbook are “not binding agreements,” because “any reference to an agreement by the employee to abide by the employee handbook” was “conspicuously absent from the acknowledgment form.” (Dkt. 61-2 at 16:25-17:5 (quoting *Mitri* , 157 Cal.App.4th at 1173)). Having lost that motion, Defendants now improperly argue the exact opposite in seeking to dissolve the Preliminary Injunction. (Dkt. 153 at 16:10-11) Defendants provide no new facts or law warranting such a reversal.

## 2. The Handbook’s Arbitration Provisions Are Not A “New Material Fact” and Defendants Have Waived Any Objections Based On Them

Reconsideration is also inappropriate because Defendants have shown neither the existence of a “new material fact” as required under Local Rule 7-9(b)(2), nor their exercise of “reasonable diligence” required for reconsideration under Local Rule 7-9(b)(1). Local Rule 7-9(b)(2) “does not apply where [the] ‘new material fact’ is merely a party’s attempt to undo a strategic position

1 for which it has been penalized.” *Kilopass Tech. Inc. v. Sidense Corp.*, No. C 10-02066 SI, 2012  
 2 WL 1901198, at \*4 (N.D. Cal. May 24, 2012) (denying reconsideration where the movant  
 3 attempted to adopt two separate, inconsistent interpretations of its patent). Yet, that is precisely  
 4 what Defendants seek to do here.

5 The Employee Handbook’s unenforceable arbitration provisions do not constitute a “new  
 6 material fact” because Defendants have long been aware of them and have waived any objections  
 7 based upon them. It is undisputed that EWB produced both the Employee Handbook and the  
 8 Arbitration Agreement to Defendant Shanker’s counsel on May 7, 2021, *over one month before*  
 9 the filing of Defendants’ Opposition to EWB’s Motion for Preliminary Injunction on June 9, 2021.  
 10 (Kang Decl., ¶¶ 7-10.) Thereafter, Defendant Shanker never objected to this action nor the  
 11 injunction proceedings based upon the arbitration provisions of the Employee Handbook. Instead,  
 12 Defendant Shanker elected to litigate the action on the merits, answering EWB’s First Amended  
 13 Complaint (without moving to compel arbitration) on May 27, 2021 (*see* Dkt. 54); serving  
 14 discovery requests; filing opposition papers to EWB’s Motion for Preliminary Injunction on June  
 15 9, 2021 (*see* Dkt. 61)<sup>2</sup>; and submitting a joint statement regarding the sufficiency of Shanker’s  
 16 discovery responses (*see* Dkt. No. 73)—all without once demanding arbitration. Defendants’  
 17 argument that Aeldra did not obtain a copy of EWB’s Employee Handbook until after the  
 18 Preliminary Injunction hearing is unavailing. The Arbitration Agreement is between Shanker and  
 19 EWB and Aeldra could not have demanded arbitration from EWB until after Shanker made a  
 20 demand for arbitration.

21 Despite having EWB’s Employee Handbook and the Arbitration Agreement in his  
 22 possession prior to the filing of EWB’s Motion for Preliminary Injunction, Defendant Shanker did  
 23 not make a demand for arbitration until after the Court’s Preliminary Injunction Order. By their  
 24 own conduct, Defendants have waived any objections based upon the arbitration provisions in the  
 25

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26 <sup>2</sup> There is no dispute that Defendants were aware of the arbitration provisions in the Employee  
 27 Handbook; they cited the acknowledgement page of the Employee Handbook—which appears on  
 28 the next page after the arbitration provisions—in their Opposition to EWB’s Motion for  
 Preliminary Injunction. (*See* Dkt. 64 at 17:5)

1 Employee Handbook. *See Kelly v. Pub. Util. Dist. No. 2*, 552 F. App'x 663, 663–64 (9th Cir.  
 2 2014) (finding waiver where defendants “waited eleven months after the lawsuit was filed to  
 3 demand arbitration, actively litigating the case in district court,” during which time “[t]he parties  
 4 conducted discovery and litigated ... a preliminary injunction” motion); *Freaner v. Valle*, 966 F.  
 5 Supp. 2d 1068, 1086 (S.D. Cal. 2013) (finding that an answer that “failed to assert arbitration as  
 6 an affirmative defense” was inconsistent with the right to arbitrate); *cf. Rushing v. Williams-*  
 7 *Sonoma, Inc.*, No. 16-CV-01421-WHO, 2020 WL 6787135, at \*3 (N.D. Cal. Oct. 8, 2020) (filing  
 8 answer and asserting arbitration as affirmative defense was consistent with the moving party’s  
 9 right to arbitrate).

10 Furthermore, the fact that Defendants demanded arbitration only *after* receiving an adverse  
 11 judicial ruling makes their request for reconsideration based upon the Employee Handbook’s  
 12 unenforceable arbitration provisions especially meritless. The law is clear that a party waives its  
 13 arbitration rights where it delays in seeking arbitration until after it has already received an  
 14 adverse judicial ruling. *See Newirth by & through Newirth v. Aegis Senior Communities, LLC*,  
 15 931 F.3d 935, 944 (9th Cir. 2019) (finding waiver of arbitration rights where defendants “did not  
 16 file a motion to compel arbitration *until after receiving an adverse ruling*”) (emphasis added);  
 17 *Kelly*, 552 F. App'x at 664 (finding waiver, explaining that “the untimely exercise of an arbitration  
 18 clause would allow [defendants] to evade future rulings of a federal judge which it fears will be  
 19 unfavorable”); *Sequoia Benefits & Ins. Servs., LLC v. Costantini*, No. C 20-08089 WHA, 2021  
 20 WL 3493734, at \*7 (N.D. Cal. Aug. 9, 2021) (finding waiver, explaining that when “the former-  
 21 employee defendants saw which way the wind was blowing in the action, they reversed course and  
 22 now move to compel arbitration” for “the primary reason of forum shopping in an attempt to  
 23 evade a potentially adverse ruling from this Court”); *Hebei Hengbo New Materials Tech. Co. v.*  
 24 *Apple, Inc.*, 344 F. Supp. 3d 1111, 1125-26 (N.D. Cal. 2018) (finding waiver, explaining that “[t]o  
 25 let [defendant] ... pursue a forum it clearly perceives as more favorable at this point would be  
 26 prejudicial”) (citation omitted).

27 Defendants cannot show either the existence of a “new material fact” or that they have  
 28 exercised the “reasonable diligence” required for reconsideration under Local Rule 7-9(b)(1). *See*

1 *Love v. Permanente Med. Grp.*, No. C-12-05679 WHO (DMR), 2014 WL 721504, at \*2 (N.D.  
 2 Cal. Feb. 24, 2014) (denying reconsideration, explaining that “[t]he facts that Defendants seek to  
 3 introduce now are facts that they could have put before the court in the exercise of reasonable  
 4 diligence before the [court’s] Order”). Defendants have long been in possession of the Employee  
 5 Handbook, but elected to litigate this case on the merits, rather than seek arbitration. Having now  
 6 lost the Motion for Preliminary Injunction, Defendants belatedly ask this Court to dissolve the  
 7 injunction based upon the same Employee Handbook that they themselves argued was “not  
 8 binding” because they want a second bite at the apple in a different forum. “This type of  
 9 gamesmanship is not the purpose for which Civil Local Rule 7–9 allows for reconsideration.”  
 10 *Kilopass Tech. Inc.*, 2012 WL 1901198, at \*4.<sup>3</sup>

### 11 **3. Reconsideration Is Not Warranted Under C.C.P. § 1281.8(b)**

12 The Preliminary Injunction Order was—and is—clearly authorized under the terms of the  
 13 Arbitration Agreement, the only binding agreement to arbitrate between Shanker and EWB. But  
 14 even assuming *arguendo* that the arbitration provisions of the Employee Handbook were  
 15 enforceable (and they are not), neither those provisions nor Section 1281.8(b) of the California  
 16 Code of Civil Procedure (“C.C.P.”) provide any basis to reconsider the Preliminary Injunction  
 17 Order.

18 Under C.C.P. § 1281.8, the Court may grant a “provisional remedy” where “the award to  
 19 which the applicant may be entitled may be rendered ineffectual without provisional relief.”  
 20 C.C.P. § 1281.8(b). The “ineffectual relief” requirement is “similar to irreparable harm” in the  
 21 preliminary injunction context. *Cal. Retail Portfolio Fund GMBH & Co. KG v. Hopkins Real Est.*  
 22 *Grp.*, 193 Cal. App. 4th 849, 857, 122 Cal. Rptr. 3d 614, 620 (2011) (quoting Sen. Com. on  
 23

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24 <sup>3</sup> Moreover, if the Preliminary Injunction Order were dissolved, EWB would “have to relitigate  
 25 a key legal issue on which the district court has ruled in [its] favor,” effectively giving Defendants  
 26 a “mulligan on a legal issue [they] chose to litigate in court and lost.” *Martin v. Yasuda*, 829 F.3d  
 27 1118, 1128 (9th Cir. 2016); *Kelly*, 552 F. App’x at 664 (“A late shift to an arbitrator would ...  
 28 require the appellees to relitigate matters decided by the district judge.”); *Gonsalves v. Infosys*  
*Techs., Ltd.*, No. C 3:09-04112, 2010 WL 3118861, at \*4, n.3 (N.D. Cal. Aug. 5, 2010) (declining  
 to allow defendants “to seek a redetermination from an arbitrator of issues on which [defendants]  
 failed to prevail before this court”).

Judiciary, analysis of Sen. Bill No. 1394 (1989–1990 Reg. Sess.) May 16, 1989, p. 2). Here, the Court has already determined that EWB established a likelihood of irreparable harm with respect to its misappropriation of trade secret and breach of contract claims eliminating any doubt as to whether EWB could meet the “ineffectual relief” requirement. (*See* Dkt. 101 at 21:7-15) (“[T]here is likelihood of irreparable harm in this case because absent a preliminary injunction, EWB will likely suffer loss of market position, loss of current and prospective customers, and increased risk of further disclosure of EWB’s Confidential Information to third parties.”) Defendants’ argument that “provisional relief” under Section 1281.8 encompasses a TRO, but not a preliminary injunction, lacks merit. Section 1281.8 expressly defines “provisional remedy” to include “preliminary injunctions and temporary restraining orders.” C.C.P. § 1281.8(a)(3). Therefore, even if the arbitration provisions of the Employee Handbook applied here, there would be no basis to reconsider the Court’s Preliminary Injunction Order.

Defendants’ reliance on *Adesa, Inc. v. Berkowitz* to argue that EWB’s “delay” in seeking injunctive relief warrants reconsideration is wholly misplaced. No. 14-CV-04022-VC, 2015 WL 11142869 (N.D. Cal. Jan. 21, 2015). In *Adesa*, the plaintiff was aware that the defendants had been misusing the company’s confidential information when it filed its original complaint. *Id.* at \*4-\*5. By contrast, here, EWB first obtained evidence of Defendants’ use of EWB’s Confidential Information on April 5, 2021 when Shanker produced emails forwarding EWB documents to Aeldra’s COO (*see* Dkt. 51-5, ¶ 2). Thereafter, EWB immediately attempted to negotiate a stipulated preliminary injunction (*id.* ¶¶ 6-9), and filed its Motion for Preliminary Injunction just two weeks after those negotiations failed (*see* Dkt. 51).<sup>4</sup> There was no undue delay. Defendants’ argument that EWB could have received effective provisional relief in arbitration is likewise unpersuasive. Although “parties ordinarily choose to arbitrate, *inter alia*, to ... increase efficiency

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<sup>4</sup> *Adesa* is inapplicable for the independent reason that the employment agreements containing arbitration provisions there “unquestionably appl[ied] to the dispute.” *Id.* at \*1. Unlike in *Adesa*, and as discussed above, the arbitration provisions in the Employee Handbook on which Defendants’ entire argument rests are unenforceable under well-settled law. For the same reason, Defendants’ other cases cited in which the court compelled arbitration or declined to grant provisional relief are also inapposite.



1 and speed ... arbitration's promised speed and efficiency frequently do not materialize in  
 2 practice." *Toyo Tire Holdings Of Americas Inc. v. Cont'l Tire N. Am., Inc.*, 609 F.3d 975, 980-81,  
 3 983 (9th Cir. 2010) (reversing denial of preliminary injunction, explaining that "the selection of  
 4 arbitrators and the constitution of the arbitral panel necessarily takes time" and "parties would be  
 5 without remedy when, as here, the delay associated with securing an arbitration panel's ruling on  
 6 interim relief could defeat any ultimate award"). In the Preliminary Injunction Order, the Court  
 7 itself explained that "*the delay here does not outweigh the other evidence in support of*  
 8 *concluding that absent a preliminary injunction, EWB will likely be irreparably harmed.*" (Dkt.  
 9 101 at 21:5-7) (emphasis added.) Defendants' Motion for Reconsideration provides no reason to  
 10 revisit this conclusion.

### 11 C. EWB's Patent Applications Are Not a Valid Ground for Reconsideration

#### 12 1. The Law Is Clear That EWB Can Possess Trade Secrets Related To 13 Patented Technology

14 Defendants' argument that the publication of EWB's Patent Applications extinguished the  
 15 secrecy of EWB's trade secrets is wrong. As detailed in the accompanying Declarations of  
 16 Rakesh Nambiar and Angela Mao, EWB's Patent Applications do *not* disclose any of the 16 trade  
 17 secrets in EWB's Identification of Trade Secrets. *See* Declaration of Rakesh Nambiar, dated  
 18 September 22, 2021 ("Nambiar Decl."), ¶¶ 4-6 ; Declaration of Angela Mao, dated September 22,  
 19 2021 ("Mao Decl."), ¶¶ 4-32. Courts have routinely held that a plaintiff is entitled to maintain  
 20 trade secrets related to novel technology that is also the subject of a patent application, so long as  
 21 the latter does not disclose the "specific details" of the claimed trade secrets. "Where a patent  
 22 application does not contain specific details about the product seeking to be protected, that  
 23 information remains a trade secret and is not considered to be within the public domain." *Parallel*  
 24 *Synthesis Techs., Inc. v. DeRisi*, No. 5:13-CV-05968-PSG, 2014 WL 4748611, at \*10 (N.D. Cal.  
 25 Sept. 23, 2014) (rejecting defendants' argument that plaintiff's patent application disclosed  
 26 plaintiff's asserted trade secrets); *Netlist, Inc. v. SMART Storage Sys., Inc.*, No. 13-CV-5962-  
 27 YGR, 2014 WL 4380760, at \*3 (N.D. Cal. Sept. 4, 2014) (sustaining trade secret misappropriation  
 28 claims related to patented technology, explaining that "[plaintiff] sufficiently alleges that the latter

1 trade secrets are distinct from the information disclosed in the patent and patent applications”).

2 Courts have also routinely issued preliminary injunctions restraining the use and disclosure  
3 of trade secrets even where there was a related patent or patent application pending. *See Lamb-*  
4 *Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 975 (9th Cir. 1991) (affirming issuance of a  
5 preliminary injunction, explaining that “[a]lthough the shape of the blade and the slicing process”  
6 was disclosed in a patent application, “the specifications, materials and manufacturing process for  
7 making the blade were still trade secrets because they were not included in the patent  
8 applications”); *Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531 (7th Cir. 2021) (affirming issuance  
9 of preliminary injunction where information sought to be protected by trade secret had not been  
10 publicly disclosed in a related patent, explaining that a “company can maintain trade secret  
11 protection in the undisclosed aspects of a product, even if it has publicly disclosed other aspects of  
12 the same product”).

13 Defendants’ reliance upon *ViChip Corp. v. Tsu-Chang Lee*, No. C 04-2914 PJH, 2005 WL  
14 8177966 (N.D. Cal. Mar. 7, 2005) is misguided. *First, ViChip Corp. v. Tsu-Chang Lee* is a “NOT  
15 FOR CITATION” case that Defendants are prohibited from citing under Local Rule 3-4(e) (“Any  
16 order or opinion that is designated: ‘NOT FOR CITATION,’ pursuant to Civil L.R. 7-14 ... may  
17 not be cited to this Court, either in written submissions or oral argument”). *Second, ViChip Corp.*  
18 *v. Tsu-Chang Lee* is inapposite, because in *ViChip Corp.*, it was undisputed that plaintiff’s trade  
19 secret information was disclosed in the provisional patent application. *See* 2005 WL 8177966, at  
20 \*4 (“ViChip concedes that the once-proprietary information is now readily available to the public  
21 and thus has now irrevocably lost its trade secret status, but claims that it is still entitled to an  
22 injunction”). As explained in Section II.C.2 below, here the exact opposite is true.<sup>5</sup>

23  
24  
25 <sup>5</sup> For the same reasons, the other cases cited by Defendants in their Motion are inapposite. *See,*  
26 *e.g., Attia v. Google LLC*, 983 F.3d 420, 426 (9th Cir. 2020) (plaintiff “admits” its trade secrets  
27 were “disclosed in Google’s published patent applications”); *Ultimax Cement Mfg. Corp. v. CTS*  
28 *Cement Mfg. Corp.*, 587 F.3d 1339, 1355 (Fed. Cir. 2009) (“undisputed” that plaintiff’s trade  
secret information was disclosed in patent); *Vital State Canada, Ltd. v. DreamPak, LLC*, 303 F.  
Supp. 2d 516, 524 (D.N.J. 2003) (plaintiff “did not refute” that patent applications disclosed its  
trade secrets).



1                               **2.       EWB’s Patent Applications Do Not Disclose The Trade Secrets**  
2                               **Asserted In This Action**

3               EWB’s pending patent application seeks to patent the “Systems and Methods for Remotely  
4 Verifying Identity of Non-Resident Aliens” as embodied in EWB’s onboarding flows depicted in  
5 the Patent Applications. These onboarding flows are high-level diagrams that broadly describe the  
6 “series of steps” involved in EWB’s NRA customer onboarding process. However, they do not  
7 disclose the “specific details” of EWB’s 16 trade secrets and thus, this trade secret information  
8 remains secret. *See Parallel Synthesis Techs., Inc.*, 2014 WL 4748611, at \*10. As explained in  
9 the Motion for Preliminary Injunction, EWB has asserted 16 trade secrets that fall into three broad  
10 categories relating to: (i) the Velo software and platform; (ii) EWB’s proprietary anti-fraud and  
11 anti-money laundering systems and BSA/AML policies; and (iii) EWB’s strategic planning  
12 documents. (Dkt. 50-4 at 5:13-16.) Only 5 of these 16 trade secrets relate even generally to its  
13 NRA customer onboarding process. To be clear, EWB does not claim “onboarding,” the  
14 “onboarding flows,” or the “series of steps” as trade secrets in this action.

15               Defendants’ Motion grossly mischaracterizes what is disclosed in EWB’s Patent  
16 Applications. While Defendants make conclusory claims that EWB’s Patent Applications disclose  
17 “a product roadmap, onboarding methods, fraud and money laundering prevention systems,  
18 KYC/AML policies, and decision trees,” Defendants do not actually identify the information in  
19 EWB’s Patent Applications that purportedly disclose EWB’s Velo Product Roadmap (Trade  
20 Secret 1); Fraud Prevention Systems (Trade Secret 7); Compliance Policies (Trade Secret 10); or  
21 Decision Trees (Trade Secret 8). (Dkt. 152-5, at 15:2-3.) Instead, Defendants attempt to conflate  
22 the “onboarding flows,” the “series of steps,” and the block diagrams depicted in the Patent  
23 Applications with EWB’s 16 trade secrets claimed in the action.

24               In their Motion, Defendants cite the following excerpts of EWB’s provisional application  
25 as allegedly disclosing EWB’s trade secrets (without actually identifying which of EWB’s trade  
26 secrets are allegedly disclosed):

**Onboarding:**

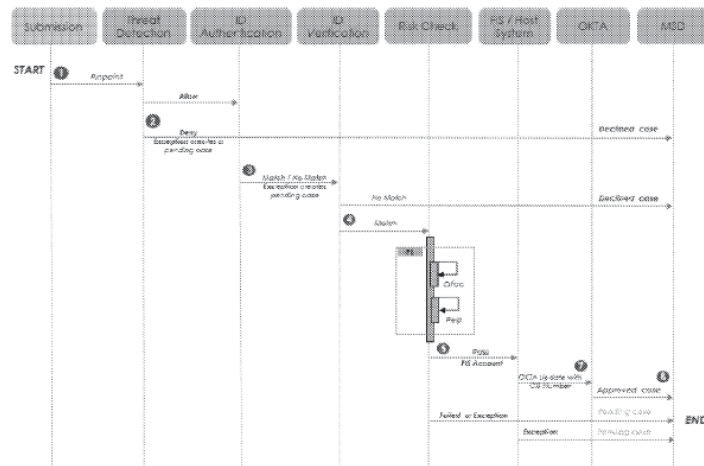
This is high level onboarding flow which depicts the customer journey starting from entering email address & phone #, selection of product, validation of ID along with OCR extraction for populating the personal information, then verify address for proper address correction, and submit the application. The process by which a customer establishes a relationship with the bank and provides all the necessary information for the bank to open an account.

There are a series of steps involved in onboarding a customer:

1. Email-id & phone #, which basically verifies using OTP transactions.
2. Shadow account creation in Token Generator.
3. Product selections [Checking, saving, pre-paid card, etc.].
4. Document Scan or Manual Entry of personal information.
5. Id Authentication.
6. Address verification.
7. Fraud Detection.
8. Personal ID validations
9. KBA Validation if transaction status from IDV is pending.
10. Name Screening / OFAC Check.
11. Perform PEP Check [Politically exposed person]
12. If all the above steps are successful, case status is "Approved".
  - Submission for account creation in Risk Management System (e.g., FIS),
  - Case created case management system with approved status.
13. If any of the steps unsuccessful, case is "Pending" or "Declined".
  - Case is created in case management system and reviewed manually.
  - Case can be approved after review.

**OnBoarding Flows****WEB UI NRA FLOW**

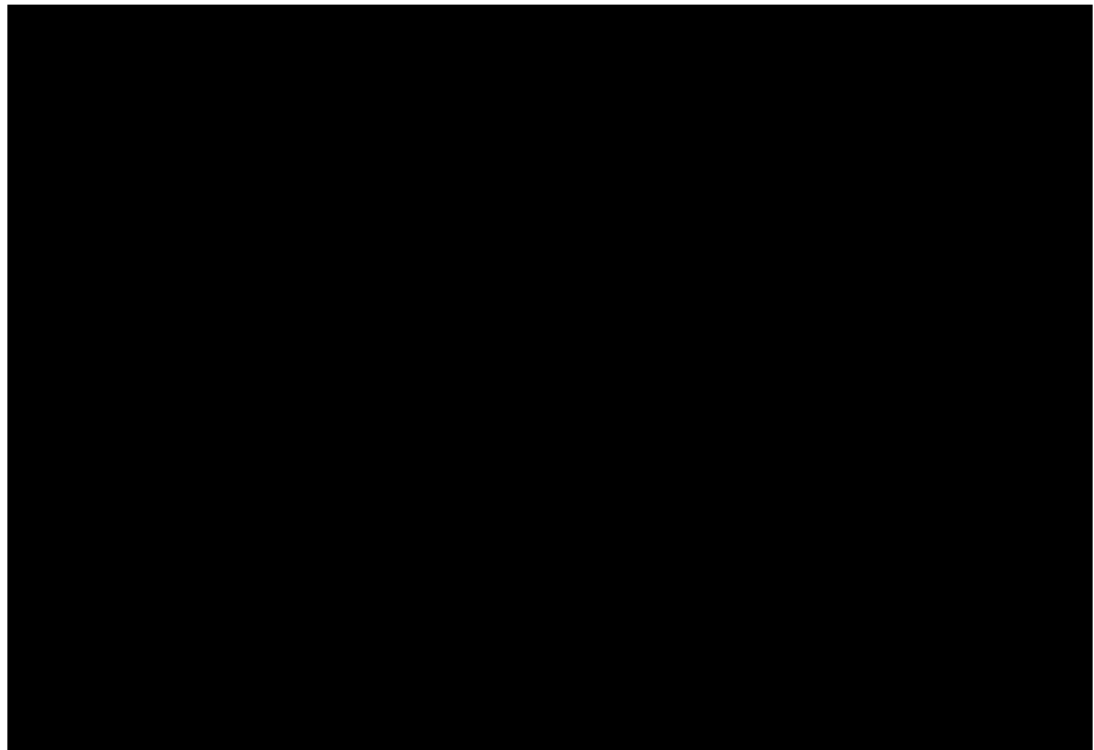
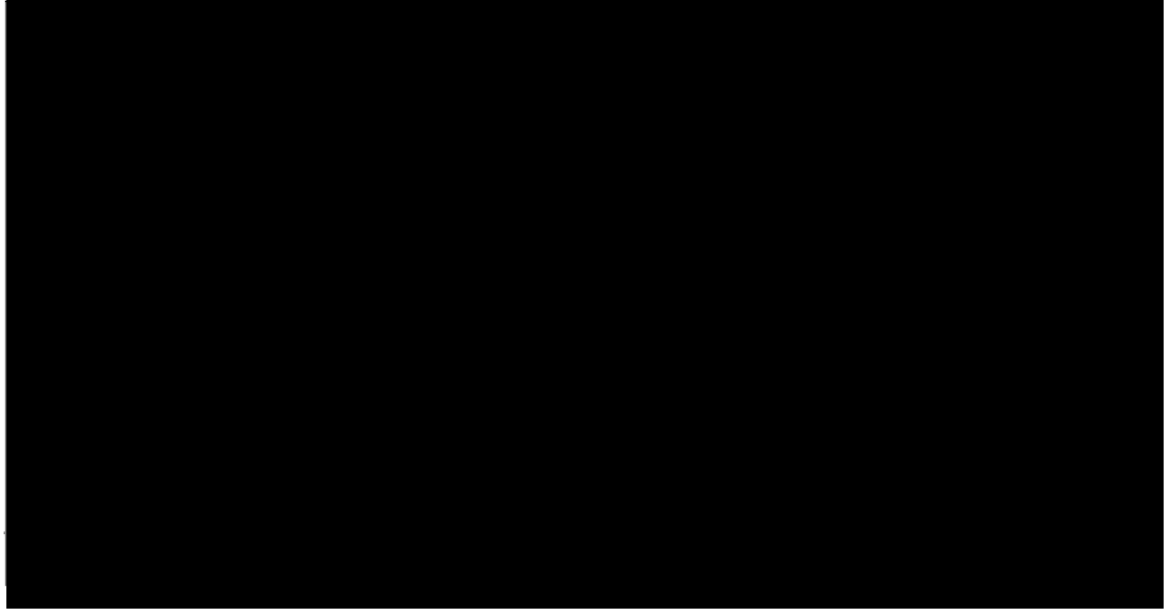
This flow is for Chinese customers, KYC for this flow includes ID verification, OFAC, PEP check. Once all this check is validated, account is created along with a case



(Dkt. 152-5, at 11) (citing Dkt. 152-1, LeGolván Decl., Ex. A at 7-9.)

By their own descriptions in the provisional application, these are “*high level onboarding flows*.” (*Id.*) (emphasis added.) While the first “flow” cited by Defendants in their Motion sets forth a “series of steps” for EWB’s NRA customer onboarding, it does *not* disclose the “specific details” of those steps. See *Parallel Synthesis Techs., Inc.*, 2014 WL 4748611, at \*10. For example, step 7 lists “Fraud Detection” as one of the “series of steps,” but importantly, it does *not* disclose EWB’s Fraud Prevention Systems (Trade Secret 7). As explained in the Mao

1 Declaration, Trade Secret 7 consists of EWB's highly proprietary fraud and money laundering  
2 prevention systems, which include EWB's "straight through processing" method and the specific  
3 fraud rules and criteria using "Red/Yellow/Green" developed internally by EWB and its  
4 consultants:



27  
28 (Mao Decl., ¶¶ 6-9.)

1 EWB does not claim the fact that it performs “Fraud Detection” as its trade secret. Rather,  
 2 EWB claims the highly proprietary fraud and money laundering prevention systems (depicted  
 3 above) that EWB developed with its consultants as Trade Secret 7 (Fraud Prevention Systems).  
 4 As a practical matter, EWB would never disclose its Fraud Prevention Systems in a patent  
 5 application, or anywhere else, because that would create significant security vulnerabilities and  
 6 allow for fraudsters and money launderers to circumvent EWB’s fraud and money laundering  
 7 prevention systems on the Velo platform. (*Id.*, at ¶ 12.)

8 Similarly, the second “flow” cited by Defendants in their Motion depicts a very high level  
 9 KYC “flow” that lists “ID verification, OFAC, PEP check” as steps of the NRA onboarding  
 10 process. (Dkt. 152-5, at 11) (citing Dkt. 152-1, LeGolván Decl., Ex. A at 7-9.) Yet, EWB has not  
 11 claimed its “onboarding flow” as a trade secret in this action. Nor has EWB claimed as a trade  
 12 secret the fact that it performs ID verification, OFAC, and PEP checks (standard screening checks  
 13 performed by all banks) as part of its KYC process. The only trade secret asserted by EWB that is  
 14 remotely related to this KYC flow is Trade Secret 9 (KYC Review Strategies). Yet, EWB’s Trade  
 15 Secret 9 (KYC Review Strategies) consist of EWB’s competitive research and benchmark  
 16 analysis, vendor selection and integration, and analysis of customer due diligence questions related  
 17 to its customer verification methods. (Mao Decl., ¶ 20.) EWB’s KYC Review Strategies are not  
 18 disclosed in this KYC flow or anywhere else in the Patent Applications. (*Id.*, at ¶ 24.)

19 Defendants’ Motion also cites an onboarding “workflow” from EWB’s provisional  
 20 application that is—yet another—high level depiction of EWB’s NRA onboarding flow. (*See* Dkt.  
 21 152-5, at 12) (citing Dkt. 152-1, LeGolván Decl., Ex. A at 29-36.) While the workflow depicts a  
 22 high level overview of EWB’s NRA onboarding process, it does **not** disclose the 16 trade secrets  
 23 claimed by EWB in this action. (*Id.*) In their Motion, Defendants do not identify any specific  
 24 trade secrets allegedly disclosed by this workflow because EWB has not claimed the onboarding  
 25 “workflow” as a trade secret in this action. (*Id.*)

26 Defendants next cite to the following two equations in EWB’s patent application and  
 27 assert, without any explanation, that they “disclos[e] a portion of the algorithm ... claimed in  
 28 Trade Secret 4[.]” (Dkt. 152-5, at 13.) The cited equations, however, are universally known

1 statistical equations from third-party sources that may be used to calculate “data sample sizes”  
 2 (equation 1), and “maximum error rate[s]” (equation 2), in connection with certain “threshold risk  
 3 score[s].” (Nambiar Decl., ¶¶ 22-25.) *EWB has never claimed these equations as its trade*  
 4 *secrets*, nor could it because they are publicly known statistical equations in the public domain:

5  
 6 [0093] Equation 1:

$$n = \frac{\text{LN}(\alpha)}{\text{LN}(1 - p_{ex})}$$

7  
 8 [0094] Where  $\alpha$  corresponds to a statistical confidence interval,  $p_{ex}$  corresponds to risk  
 9 tolerance rate for the provider institution, and  $n$  corresponds to a number of observations  
 (e.g., sample size).

10 [0095] The maximum error rate ( $f(k, n, p)$ ) may be determined using Equation 2.

11 [0096] Equation 2:

$$f(k, n, p) = \binom{n}{k} p^k (1 - p)^{n-k}$$

12 (Dkt. 152-5, at 13) (citing LeGolván Decl., Ex. B, at 39.)

13 Equation 2 is a Binomial Distribution error rate calculation formula used to calculate  
 14 maximum error rates and *appears on the Wikipedia page* for “Binomial distribution, Probability  
 15 mass function”<sup>6</sup>:

16 Definitions [edit]

17 Probability mass function [edit]

18 In general, if the random variable  $X$  follows the binomial distribution with parameters  $n \in \mathbb{N}$  and  $p \in [0, 1]$ , we write  $X \sim B(n, p)$ . The probability  
 of getting exactly  $k$  successes in  $n$  independent Bernoulli trials is given by the probability mass function:

19 
$$f(k, n, p) = \Pr(k; n, p) = \Pr(X = k) = \binom{n}{k} p^k (1 - p)^{n-k}$$

20 (Nambiar Decl., ¶ 24.)

21 While these two statistical equations are related to EWB’s OFAC verification check, they  
 22 do not disclose the algorithms claimed by EWB in Trade Secret 4. (*Id.*, at 25.) As the provisional  
 23 application makes clear, “OFAC and PEP have [a] universal scoring system, *East West Bank*  
 24 (*‘EWB’*) *has calculated ‘sweet spots’ for passing scores[.]*” (LeGolván Decl., Ex. A, at 22)  
 25 (emphasis added.) The Patent Applications do *not* disclose these highly proprietary “sweet spots”  
 26 developed by EWB.

27  
 28 <sup>6</sup> [https://en.wikipedia.org/wiki/Binomial\\_distribution](https://en.wikipedia.org/wiki/Binomial_distribution) (last accessed Sept. 22, 2021).

1 In sum, Defendants’ conclusory allegation that EWB’s Patent Applications disclose “most”  
 2 of the trade secrets at issue in this action are simply false. Notably absent from Defendants’  
 3 Motion is *any* substantive discussion of the representative trade secrets (Trade Secrets 1, 2, 7, 8,  
 4 11, 12) briefed by the parties in the underlying motion papers<sup>7</sup>, argued by counsel at the Motion  
 5 for Preliminary Injunction hearing, and addressed in the Court’s Preliminary Injunction Order:

6 a. Velo Product Roadmap (Trade Secret 1). EWB’s Velo Product Roadmap is  
 7 a highly proprietary, internal organizational document with detailed information identifying all of  
 8 EWB’s planned product features and milestones for the Velo platform. (Nambiar Decl., ¶¶ 8-10;  
 9 *see also* Dkt. 50-11, ¶ 22(a).) EWB’s Velo Product Roadmap is not related to its NRA onboarding  
 10 process, and Defendants have not identified any aspects of EWB’s Patent Applications where  
 11 EWB’s Velo Product Roadmap is allegedly disclosed—apart from Defendants’ conclusory claim  
 12 that EWB’s patent application discloses “a product roadmap.” (Dkt. 152-5, at 15:2.) EWB did  
 13 not and would not disclose its Velo Product Roadmap in its Patent Applications because it is not  
 14 directly related to EWB’s NRA onboarding process and would allow competitors to easily  
 15 replicate and release a similar product and feature set. (Nambiar Decl., ¶ 10.)

16 It is undisputed that Shanker forwarded a copy of the Velo Product Roadmap to Aeldra’s  
 17 COO, Defendant Gopalakrishnan, on April 14, 2020. (Dkt. 86, Shanker Decl., ¶ 56(c).) On July  
 18 14, 2021, shortly before the hearing on EWB’s Motion for Preliminary Injunction, Defendant  
 19 Aeldra produced a copy of the Aeldra Product Roadmap to EWB. (Dkt. 101, at 8:8-17.) The  
 20 Aeldra Product Roadmap was created on April 24, 2020 (according to its metadata) and includes a  
 21 verbatim copy of EWB’s Velo Product Roadmap, as well as other trade secret information,  
 22 including EWB’s Velo Value Proposition and Roadmaps (Trade Secret 5) and EWB’s Velo  
 23 Product Features and Designs (Trade Secret 6), none of which is disclosed in EWB’s patent  
 24 application. (*See* Kang Decl., Ex. 7) (Aeldra Product Roadmap.) Defendants unlawfully used  
 25 EWB’s Velo Product Roadmap in the development of the Aeldra platform.

26 b. Digital Banking Architecture Diagrams (Trade Secret 2). EWB’s Digital  
 27

28 <sup>7</sup> (*See* Dkt. 50-4, at 5-7; Dkt. 61-3, at 13-16; Dkt. 74-4, at 9-11.)

Banking Architecture Diagrams provide an overview of the technical architecture of the Velo platform, including specific components, layers, functions, and even the vendors retained to perform certain functions. (Nambiar Decl., ¶¶ 11-13; *see also* Dkt. 50-11, ¶ 22(b).) EWB's Digital Banking Architecture Diagram is not related to its NRA onboarding process, and Defendants have not identified any aspects of EWB's Patent Applications where EWB's Digital Banking Architecture Diagrams are allegedly disclosed. EWB did not and would not disclose its Digital Banking Architecture Diagrams in its patent application because they are not directly related to EWB's NRA onboarding methods and it would allow competitors to bypass the time and effort in the design, vendor, and technology selection of the competitors' own product development process. (Nambiar Decl., ¶ 13.) It is undisputed that Shanker forwarded copies of EWB's digital banking architecture diagrams to his personal email account on March 13, 2019. (Dkt. 86, Shanker Decl., ¶ 23.) Defendants unlawfully used EWB's Digital Banking Architecture Diagrams in the development of the Aeldra platform.

c. Fraud Prevention Systems (Trade Secret 7): EWB's Fraud Prevention Systems consist of the highly proprietary fraud and money laundering prevention systems, which include EWB's "straight through processing" method and the specific fraud rules and criteria using "Red/Yellow/Green" developed internally by EWB and its consultants. (Mao Decl., ¶ 6; *see also* Dkt. 51-2, ¶ 15(a).) While EWB's Fraud Prevention Systems generally relate to EWB's onboarding process, the trade secret information comprising its Fraud Prevention Systems are not disclosed in the Patent Applications. (Mao Decl., ¶ 11.) It is undisputed that Defendant Shanker: (i) forwarded copies of EWB's "Financial Crime Controls for Digital Bank" and "Digital Bank Fraud Management Approach" to his personal email account on March 13, 2019; (ii) forwarded copies of EWB's IBM Pinpoint and Azure Rules (which discloses specific, proprietary fraud rules using "Red/Yellow/Green") to his personal email account on March 13, 2019; and (iii) retained a hard copy of EWB's "Financial Crime Controls for Digital Bank" at his home following his termination. It is also undisputed that Defendant Shanker forwarded copies of EWB's "IBM Pinpoint Decision Flow and Azure Logic" describing Velo's fraud rules using "Red/Yellow/Green" and EWB's "Digital Bank Fraud Management Approach" to Rohit Mehtani



1 on August 24, 2019. (Dkt. 86, Shanker Decl., ¶¶ 23, 56(a), 57.)

2 In addition, Defendant Shanker's August 27, 2021 document production included multiple  
3 photos of the hard copy "Financial Crime Controls for Digital Bank," including EWB's  
4 proprietary "straight through processing" key metrics, as well as multiple screen shots of EWB's  
5 "IBM Pinpoint Decision Flow and Azure Logic," which includes detailed information concerning  
6 EWB's fraud review process and "Red/Yellow/Green" fraud detection rules. (*See* Kang Decl., ¶  
7 20.) Defendants unlawfully used EWB's Fraud Prevention Systems in the development of the  
8 Aeldra platform.

9 d. Decision Trees (Trade Secret 8): EWB's Decision Trees determine whether  
10 flags for fraudulent activity should stop a transaction immediately, allow the activity to continue,  
11 or require manual review by EWB's fraud department. (Mao Decl., ¶ 13; *see also* Dkt. 51-2, ¶  
12 15(b).) While EWB's Decision Trees generally relate to its onboarding process, the trade secret  
13 information comprising its Decision Trees are not disclosed in the Patent Applications. (Mao  
14 Decl., ¶ 16.) While certain figures in the patent application refer to an applicant "passing" or  
15 "failing" certain verification checks, these figures do not disclose EWB's Decision Trees,  
16 including the vendors EWB has selected to perform each verification check, the detailed rules for  
17 each step, or the threshold criteria and scoring developed by EWB to determine whether an  
18 applicant passes, fails, or requires further analysis and/or manual review. (*Id.*, at ¶¶ 16-18.) The  
19 Patent Applications do not disclose EWB's Decision Trees. (*Id.*, at ¶ 19.) It is undisputed that  
20 Defendant Shanker forwarded a copy of EWB's Decision Trees to his personal email account on  
21 March 13, 2019. (Dkt. 86, Shanker Decl., ¶ 23.) EWB's Decision Trees would have been  
22 extremely useful to Defendants in developing Aeldra's Red/Amber/Green decision-making  
23 process, allowing Defendants to shortcut the research and development process by seeing what  
24 EWB did at each step, deciding which EWB processes Defendants would incorporate, and thereby  
25 saving Defendants significant time and financial resources in developing the Aeldra platform.  
26 Defendants unlawfully used EWB's Decision Trees in the development of the Aeldra platform.

27 e. Digital Banking Expense Forecasts (Trade Secret 11): EWB's Digital  
28 Banking Expense Forecasts detail EWB's vendors and pricing for projects and staffing to develop



1 and build aspects of the Velo platform. (Nambiar Decl., ¶ 31; *see also* Dkt. 50-11, ¶ 23(a).)  
 2 EWB's Digital Banking Expense Forecasts are not related to its NRA onboarding process, and  
 3 Defendants have not identified any aspects of EWB's Patent Applications where EWB's Digital  
 4 Banking Expense Forecasts are allegedly disclosed. (Nambiar Decl., ¶ 32.) It is undisputed that  
 5 Defendant Shanker forwarded copies of EWB's Digital Banking Expense Forecasts to his personal  
 6 email accounts on March 13, 2019. (Dkt. 86, Shanker Decl., ¶ 23.) In addition, Defendant  
 7 Shanker's August 27, 2021 document production included screen shots of EWB's Digital Banking  
 8 Expense Forecasts that disclosed EWB's costs, budgets, and projected forecasts, including  
 9 forecasts for employee overhead and staffing. (*See* Kang Decl., ¶ 20.) Defendants unlawfully  
 10 used EWB's Digital Banking Expense Forecasts in the development of the Aeldra platform.

11 f. Target Customer Strategies (Trade Secret 12): EWB's Target Customer  
 12 Strategies disclose EWB's internal strategies for targeting customer segments and its plans for  
 13 future product features and versions to attract new customers. (Nambiar Decl., ¶ 33; *see also* Dkt.  
 14 50-11, ¶ 23(b).) EWB's Target Customer Strategies are not related to its NRA onboarding  
 15 process, and Defendants have not identified any aspects of EWB's Patent Applications where  
 16 EWB's Target Customer Strategies are allegedly disclosed. (Nambiar Decl., ¶ 35.) It is  
 17 undisputed that Defendant Shanker forwarded copies of EWB's Target Customer Strategies to  
 18 Defendant Gopalakrishnan (Aeldra's COO) on August 14, 2019. (Dkt. 86, Shanker Decl., ¶  
 19 56(d).) In addition, Defendants' August 27, 2021 document productions included screen shots of  
 20 EWB's target customer strategies. (*See* Kang Decl., ¶ 20.) Defendants unlawfully used EWB's  
 21 Target Customer Strategies in the development of the Aeldra platform.

22 The Court's Preliminary Injunction Order, specifically, examined Trade Secrets 1, 2, 7, 8,  
 23 11, and 12 and concluded that EWB had adequately identified its trade secrets and was likely to  
 24 "succeed on the merits of its misappropriation of trade secrets claim." (*See* Dkt. 101, at 14:14-  
 25 19:2.) EWB's Patent Applications do not change the merits of the Court's findings with respect to  
 26 EWB's Motion for Preliminary Injunction. Defendants' Motion has not proven "new material  
 27 facts" warranting reconsideration.

1                                   **3.       The Timing of the Disclosure of EWB's Patent Applications Is**  
 2                                   **Irrelevant to the Preliminary Injunction Order**

3               Finally, Defendants' claims of impropriety relating to the disclosure of EWB's Patent  
 4 Applications are baseless. As the Court noted at the July 14, 2021 hearing, "*we're at the*  
 5 *beginning of this case.*" (Kang Decl., Ex. 2 at 18:24-25) (emphasis added.) When EWB filed its  
 6 Motion for Preliminary Injunction, discovery had only recently commenced. (Kang Decl., ¶¶ 3-9.)  
 7 At the time of the July 14, 2021 hearing, Defendants themselves had produced no discovery  
 8 relating to the development of the Aeldra platform. (*Id.*, at ¶ 11.) Defendants' argument that  
 9 EWB should have produced discovery relating to its Patent Applications prior to filing its Motion  
 10 for Preliminary Injunction is, therefore, baseless. EWB filed its Motion for Preliminary Injunction  
 11 shortly after Defendant Shanker made his first document production, which included emails from  
 12 Shanker forwarding EWB's documents to Shanker's business partners, Defendant Gopalakrishnan  
 13 and Rohit Mehtani. (*Id.*, at ¶ 5.)

14               EWB's Patent Applications are irrelevant to EWB's Motion for Preliminary Injunction,  
 15 because EWB's claim for misappropriation of trade secrets is based upon the 16 trade secrets  
 16 asserted by EWB in this action, none of which are disclosed in EWB's Patent Applications.  
 17 Shortly after the Court's issuance of the Preliminary Injunction Order, the action (including  
 18 discovery) was stayed pending resolution of Defendants' Motions to Compel Arbitration. (*Id.*, at  
 19 ¶ 19.) EWB did not intentionally withhold any discovery relating to its Patent Applications.

20               Furthermore, Defendants' Motion acknowledges that Defendants discovered EWB's Patent  
 21 Applications while conducting a prior art search. (Dkt. 153-1, ¶ 3) ("Before the Court granted the  
 22 temporary stay ... Defendants began its expert investigation and related prior art search regarding  
 23 EWB's alleged trade secrets." In fact, EWB's patent application was publicly available as of  
 24 **April 15, 2021** and Defendants' opposition to EWB's Motion for Preliminary Injunction was not  
 25 filed until **June 9, 2021**. While EWB strongly disagrees with Defendants' suggestion that its  
 26 Patent Applications are relevant to EWB's Motion for Preliminary Injunction, Defendants, by  
 27 their own admission, could have conducted their own prior art search of the public records before  
 28 the filing of their opposition papers on June 9, 2021. Therefore, the existence of EWB's Patent

1 Applications is not a “new material fact” warranting reconsideration under L.R. 7-9.

2 D. [REDACTED]

3  
4 Defendants’ Motion improperly argues that reconsideration is warranted because [REDACTED]

5 [REDACTED] (Dkt. 152-7, Shanker Decl., ¶¶ 2-3.)

6 This is not a basis for reconsideration under L.R. 7-9. At the July 14, 2021 hearing, Defendants’  
7 counsel represented to the Court that Defendants did not oppose entry of a preliminary injunction;  
8 rather, they only expressed concern regarding the scope of a preliminary injunction order:

9 THE COURT: All right. And so if you were prohibited from using any of the  
10 confidential information, alleged trade secrets that wouldn’t – are you telling me  
that wouldn’t impact your company at all because you’re not using them?

11 AELDRA’s COUNSEL: Yes .... And *so if the injunction is simply, ‘Do not use*  
12 *East West Bank materials,’* and that really is it, *we’re, quite frankly, fine with*  
*that.*

13 (Kang Decl., Ex. 2, at 8:11-24 ) (emphasis added.)

14 THE COURT: And you don’t – and you believe that hasn’t been using or  
15 possessing the – any trade secrets of East West Bank, so you would be happy to  
16 stipulate to an injunction that he not do that.

17 SHANKER’S COUNSEL: Well, but what – the answer to that is *partially, yes...*

18 (*Id.*, at 13:18-23) (emphasis added.)

19 The Preliminary Injunction Order confirms that “*Defendants assert that the preliminary*  
20 *injunction will not harm them.*” (Dkt. 101, at 24:2) (emphasis added.) The Court expressly  
21 provided Defendants seven days to submit a declaration attesting to any business disruption  
22 caused by the Preliminary Injunction Order. (*Id.*, at 26:10-17.) Yet, Defendants declined to  
23 submit any such declaration. (Kang Decl., ¶¶ 12-13.)

24 Defendants’ newly-alleged [REDACTED] is likely  
25 attributable to the fact that Defendants unlawfully used EWB’s Confidential Information to  
26 develop the Aeldra platform. Defendants’ belated request for relief [REDACTED] is  
27 particularly inappropriate given that Defendants clearly disclosed EWB’s Confidential  
28 Information to potential investors during their first round of investor funding:

- 1 • [REDACTED]
- 2 [REDACTED]
- 3 • [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 • [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]

10 (See Kang Decl., Exs. 6, 8, 9) (emphasis added.)

11 **E. Defendants Are Violating the Court’s Preliminary Injunction Order**

12 Recently-produced discovery confirms Defendants are seeking to dissolve the Preliminary  
 13 Injunction Order because Defendants know they have violated its terms and continue to do so.  
 14 Defendants’ August 27, 2021 document production included *additional documents containing*  
 15 *EWB’s Confidential Information* that were not previously returned to EWB, including but not  
 16 limited to, screenshots of EWB’s “Financial Crime Controls for Digital Bank” which sets forth  
 17 EWB’s “straight through processing” key metrics (Trade Secrets 7, 10); screenshots of EWB’s  
 18 fraud rules using “Red/Yellow/Green” (Trade Secret 7); screenshots of EWB’s Digital Banking  
 19 Expense Forecasts (Trade Secret 11); and screenshots of EWB’s Target Customer Strategy  
 20 documents (Trade Secret 12). (Kang Decl., ¶ 20.)

21 Many of these documents conclusively prove that Defendants used EWB’s Confidential  
 22 Information after Shanker was terminated from EWB. For example, the screen shot of EWB’s  
 23 “IBM Pinpoint Decision Flow and Azure Logic” describing Velo’s fraud rules using  
 24 “Red/Yellow/Green” displays in the bottom right corner the date and time when the screen shot  
 25 was taken – **May 8, 2019** at 3:46 p.m. (See Kang Decl., Ex. 10.) On August 24, 2019, Shanker  
 26 forwarded these screenshots of EWB’s fraud rules to Rohit Mehtani, who was working with  
 27 Shanker on his fintech startup Alpha Oak. (Dkt. 86, Shanker Decl., ¶ 56(a).)

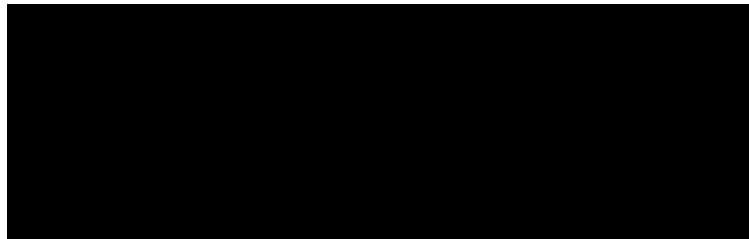
1 Furthermore, Defendants' August 27, 2021 document production directly contradicts many  
2 of the arguments made by Defendants in their Opposition to EWB's Motion to Preliminary  
3 Injunction. For example, in their opposition papers, Defendants argued that the Aeldra platform  
4 was independently created by third-party vendors (i2c, FS Vector, and Blue Ridge Bank) and  
5 therefore, Defendants could not have used EWB's Confidential Information in the development of  
6 the Aeldra platform. At the hearing, Aeldra's counsel similarly argued: "And certainly, the  
7 Aeldra platform was created, as well as its policies and procedures which sort of create the key  
8 aspects of East West Bank's trade secret information, *all of that was created by third-party*  
9 *vendors* working with Aeldra; and that's your i2c's, your FS Vectors, and your Blue Ridge  
10 Banks..." (Kang Decl. Ex. 2, at 7:22-8:2) (emphasis added.)

11 However, Defendants' August 27, 2021 document production proves categorically that  
12 Aeldra development documents were created many months prior to Aeldra's engagement of any  
13 third-party vendors. It is undisputed that Aeldra was incorporated on October 29, 2019. *One*  
14 *month later*, Defendants had an Aeldra development document titled "[REDACTED]"  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]:

1 (Kang Decl., Ex. 11.)

2 In their opposition to EWB's Motion for Preliminary Injunction, Defendants argued that  
 3 Aeldra's Red/Amber/Green decisioning was developed by FS Vector. (*See* Dkt. 61-2, at 8:5-15.)  
 4 Yet, Aeldra did not retain FS Vector until February 5, 2020 – *three months later*. (Dkt. 86,  
 5 Shanker Decl. ¶ 38 & Ex. E.)

6 Similarly, in a December 17, 2019 email, Defendant Shanker provided the following status  
 7 update on the development of the Aeldra platform:



12 (Kang Decl., Ex. 12.) These tasks, which were “done” by December 2019, obviously could not  
 13 have been performed by vendors only retained months later.<sup>8</sup> This is yet further evidence that  
 14 Defendants used EWB's Confidential Information in connection with the Aeldra platform and that  
 15 EWB will suffer irreparable harm if the Preliminary Injunction Order is dissolved.

### 16 **III. CONCLUSION**

17 For the foregoing reasons, EWB respectfully requests that the Court deny Defendants'  
 18 Motion for Reconsideration of the Court's Preliminary Injunction Order.

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26 <sup>8</sup> FS Vector, who Defendants allege to have developed Aeldra's compliance policies and anti-  
 27 fraud/AML systems, was retained by Aeldra on February 5, 2020. Aeldra entered into an  
 28 agreement with i2c (who Defendants allege to have designed the Aeldra platform) on May 27,  
 2020. (Shanker Decl. ¶ 46 & Ex. B.) Aeldra entered into an agreement with Blue Ridge Bank on  
 August 13, 2020. (Dkt. 86, Shanker Decl. ¶ 37 & Ex. G.)

1 DATED: September 22, 2021

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